

## **REMARKS**

Claims 1-20, 22-81 and 83-99 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

### **Finality of the Action:**

The status of the present Action has been improperly made final. Applicants respectfully request removal of the finality of the Office Action mailed December 6, 2006 for at least the following reasons.

According to MPEP § 706.07(a), a second or subsequent action on the merits in any application patent undergoing reexamination proceedings will not be made final if it includes a new rejection, other than a new rejection based on information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17 (p), or a new rejection necessitated by amendment.

Applicants note that no claims have been amended to require newly cited art. Instead, as stated in the Office Action, the new grounds of rejection were required because Applicants' arguments filed November 13, 2006 were found to be persuasive. Independent claim 39 was not amended in the previous response, and has only been amended once to correct a typographical error. Thus, the new ground of rejection of claim 39 was clearly **not** necessitated by amendment. Applicants also note that new grounds for rejection in the Final Action were not based on art newly disclosed in an information disclosure statement submitted during the period set forth in 37 CFR 1.97(c). Instead, the new grounds of rejection for claims 39-45, 48-49, 86-89, and 98 were based on art already of record (Rochberger, which was included in an information disclosure statement submitted November 1, 2005; and McCanne, Dutta, and Zhang, which were cited by the Examiner in previous Office Actions) and on new art (Weisman) cited by the Examiner.

Therefore, Applicants assert that the Office Action should not have been made final and respectfully request removal of the finality thereof.

### **Double Patenting Rejection:**

The Examiner rejected claims 1-20, 22-81 and 83-99 under the judiciary created doctrine of obviousness-type double patenting as being unpatentable over claims 1-61, 1-40, 1-71, 1-203, 1-116 and 1-111 of copending Application Nos. 10/055,649, 10/055,645, 10/055,741, 10/055,641, 10/055,662, 10/055,773, 10/054,809 and 10/164,259. Applicants respectfully traverse this rejection for at least the following reasons.

Applicants assert that the Examiner has repeatedly failed to state a proper *prima facie* obviousness-type double patenting rejection. In the Office Action mailed December 6, 2006, the Examiner again fails to meet the requirements stated in MPEP 804.II.B.1 to establish a *prima facie* obviousness-type double patenting rejection. For example, MPEP 804.II.B.1 states that the Examiner should list the differences between **each** rejected claim and the claims of the other patent/application, and for **each** difference the Examiner should give the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim is an obvious variation of the invention defined in a claim of the other patent/application. In his rejection, however, **the Examiner completely ignores the pertinent details of the limitations of claim 1**, by stating, “the instant application contains the subject matter claimed in the ‘259 application. As per claim 1, the applications are claiming common subject matter, as follows: A peer-to-peer network environment, comprising: a plurality of peer groups...; a plurality of peer nodes...; a subset of said plurality of peer nodes...; wherein each peer group...; wherein a plurality of members...” without noting the specific limitations of the peer groups, the peer nodes, the subset of peer nodes, etc., recited in the claim.

The Examiner admits that the claims of the ‘259 application “do not specifically state discovery protocol as described in the claims of the instant application.” The

Examiner goes on to submit, “but it would have been obvious to a person skilled in the art to recognize that the mechanism for discovering peer nodes of ‘259 application is the similar in functionality to the discovery protocol of the instant application because it would enable peer nodes to discover, communicate, and access resources or services of other peer nodes.” This broad, conclusory statement clearly does not meet the requirement that the Examiner should list the differences between **each** rejected claim and the claims of the other patent/application, and for **each** difference the Examiner should give the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim is an obvious variation of the invention defined in a claim of the other patent/application (MPEP 804.II.B.1). Simply stating that it would have been obvious that the mechanisms for discovery in the two applications would be similar is not a valid reason why a person of ordinary skill in the art would conclude that the invention defined in each claim is an obvious variation of the invention defined in a claim of the other patent/application.

Nor did the Examiner specifically address **each difference** of **each claim** of the present application compared to the claims of **each of the other cited applications**. Instead, the Examiner described only “an exemplary claim”, claim 1, and addressed only the single difference discussed above, i.e., a difference between **one limitation of one claim** as compared to **the entire collection of claims in one of the cited applications**. The Examiner failed to give any evidence related to any other limitations of any other claims of the instant application or differences between them and the claims of any of the other cited applications. Instead, the Examiner rejected all of the claims of the instant application as a group, referencing (generically and as a group) all of the claims of the cited applications, without even listing the claim numbers for two of the cited applications. The Examiner then stated that the remaining independent claims of the instant application “are directed to the same subject matter recited in claim 1” and that the dependent claims of the instant application “depend on the rejected claims”. Applicants assert, however, that numerous ones of the other independent claims clearly recite different subject matter than that recited in claim 1.

Nor did the Examiner even attempt to perform a comparison between the claims of any of the 10/055,649, 10/055,645, 10/055,741, 10/055,641, 10/055,662, 10/055,773, and 10/054,809 applications with the claims of the present application. The 10/164,259 application is the only application for which the Examiner made any reference at all to the content of the claims. Thus, on its face, the Office Action does not even attempt to state a *prima facie* case of obviousness-type double patenting in regard to applications 10/055,649, 10/055,645, 10/055,741, 10/055,641, 10/055,662, 10/055,773, and 10/054,809.

For at least the reasons above, the Examiner has failed to state a proper *prima facie* rejection. Accordingly, Applicants request removal of the provisional double patenting rejections of claims 1-20, 22-81 and 83-99.

#### **Section 103(a) Rejection:**

The Examiner rejected claim 39 under 35 U.S.C. § 103(a) as being unpatentable over Rochberger et al. (U.S. Patent 6,456,600) (hereinafter “Rochberger”) and Weisman et al. (U.S. Publication 2002/0112058) (hereinafter “Weisman”), claims 40, 41 and 43-45 as being unpatentable over Rochberger and Weisman and further in view of McCanne et al. (U.S. Patent 6,415,323) (hereinafter “McCanne”), claim 42 as being unpatentable over Rochberger and Weisman and further in view of Dutta et al. (U.S. Publication 2002/0073075) (hereinafter “Dutta”), and claims 48 and 49 as being unpatentable over Rochberger and Weisman in view of Zhang (U.S. Patent 6,810,259). Applicants respectfully traverse these rejections for at least the following reasons.

**Regarding claim 39, contrary to the Examiner’s assertion, Rochberger in view of Weisman does not teach or suggest program instructions executable by the processor to: *create an advertisement for a peer group in accordance with a protocol.*** The Examiner cites Rochberger (column 11, line 58 – column 12, line 29) as teaching this limitation. This passage describes uplink advertisements, which are used to indicate

to a node in a peer group which border nodes have connectivity to higher level nodes. Therefore, rather than being an advertisement for a peer group, these uplinks are advertisements for these higher level nodes that the peer group may be connected to through a border node.

**Rochberger in view of Weisman also fails to teach or suggest an advertisement for a peer group that comprises *an identifier for the peer group*, as recited in claim 39.** The Examiner cites Rochberger (column 9, lines 24-43) as teaching this limitation. While this citation describes identifiers of peer groups (peer group IDs), these peer group IDs are not described as having anything to do with a peer group advertisement, nor with the uplink advertisements cited by the Examiner as being analogous to Applicants' peer group advertisements.

**Rochberger in view of Weisman also fails to teach or suggest an advertisement for a peer group that comprises *a description of a common set of services to be instantiated within the peer group by members of the peer group*.** The Examiner admits that Rochberger fails to teach this limitation and relies on Weisman to teach it, in paragraph [0036]. Weisman describes a single peer networking host that provides a set of services for various software modules (hosted devices 108-109, and hosted bridge 110 for bridged device 112) to interact with other devices on network 116. These services are not described as being instantiated by members of a peer group, nor is any such peer group described. Instead, the peer networking host framework and hosted devices are all described as being instantiated on a single node, the peer networking host. The cited paragraph, paragraph [0036], describes that the hosted devices may register service objects for services instances that they contain and that these hosted services implement a dispatch interface. These hosted services are also not a common set of services to be instantiated by members of a peer group, but are services instantiated on individual hosted devices (software modules on the peer networking host) connected to the network through the peer networking host. Furthermore, there is clearly nothing in Weisman that teaches or suggests an advertisement for a peer group including a description of a common set of services be instantiated within the peer group by members

of the peer group, since no such common set of services is described. Therefore, Applicants assert that Weisman fails to overcome the deficiencies of Rochberger in teaching this limitation.

**Rochberger in view of Weisman also fails to teach or suggest an advertisement for a peer group that comprises *a membership service advertisement indicating how other peers may request to join the peer group*.** The Examiner cites Rochberger (column 9, line 66 – column 10, line 6) as teaching this limitation. This passage describes nodes exchanging Hello messages with their immediate neighbors to determine local state information. This local state information includes peer group membership of the node's neighbors. However, there is nothing in this passage that teaches or suggests a membership service advertisement indicating how other peers may request to join a peer group, nor that such a membership service advertisement is comprised in a peer group advertisement, as required by claim 39.

**Furthermore, Rochberger in view of Weisman fails to teach or suggest *publish at least a portion of said advertisement for the peer group including said identifier and said membership service advertisement*.** The Examiner admits that Rochberger fails to teach this limitation and relies on Weisman to teach it, in paragraph [0034]. However, this paragraph describes, “Device Host API 102 enables software modules (the hosted devices 108-109 and bridges 110 for bridged devices 112) to publish themselves as peer networking-enabled devices.” This clearly does not describe publishing an advertisement for a peer group, but describes publishing software modules (which are instantiated on the peer networking host) through the device host API. Therefore, Applicants assert that Weisman fails to overcome the deficiencies of Rochberger in teaching this limitation.

The Examiner submits that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Rochberger to include a description of a common set of services to be instantiated by peer nodes or devices in a peer group advertisement and to publish at least a portion of said advertisement for the peer devices

including said identifier and said membership service advertisement in order to provide services for software and devices on a computer to expose them as controlled devices per a peer networking protocol (Weisman, paragraph [0005]).

Applicants assert, however, that neither Rochberger or Weisman, or the combination thereof, teaches or suggests a peer group advertisement at all, much less one having the specific limitations recited in claim 39. Therefore, it would not be obvious to publish such an advertisement, nor to include additional elements in it.

Applicants remind the Examiner that to establish a *prima facie* obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974), MPEP 2143.03. As discussed above, Rochberger in view of Weisman fails to teach or suggest all the limitations of claim 39, whether the references are taken separately or in combination.

For at least the reasons above, the rejection of claim 39 is unsupported by the cited art and removal thereof is respectfully requested.

Claims 86 and 98 include limitations similar to those discussed above regarding claim 39. Therefore, the arguments presented above apply with equal force to these claims as well.

**Regarding claim 40, contrary to the Examiner's assertion, Rochberger in view of Weisman and McCanne fails to teach or suggest *wherein said advertisement for the peer group further comprises a name associated with the peer group*.** The Examiner cites McCanne (column 18, lines 25-48) as teaching this limitation. This passage teaches a multi-part name for anycast referral nodes (ARNs) and service nodes. However, since Rochberger in view of Weisman does not teach or suggest an advertisement for a peer group, McCanne cannot teach or suggest the addition of a peer group name to such an advertisement.

For at least the reasons above, the rejection of claim 40 is unsupported by the cited art and removal thereof is respectfully requested.

**Regarding claim 41, contrary to the Examiner's assertion, Rochberger in view of Weisman and McCanne fails to teach or suggest *wherein said name associated with the peer group is obtained from a centralized naming service coupled to the network, so that said name associated with the peer group is unique within the network*.** The Examiner cites McCanne (column 9, lines 28-47) as teaching this limitation. This passage describes the Domain Name System (DNS) which handles IP host name-to-address mappings and which can be adapted for use in mapping an anycast address back to the master service site or to a set of sub-services. However, since Rochberger in view of Weisman does not teach or suggest an advertisement for a peer group, McCanne cannot teach or suggest a peer group name in a peer group advertisement that is obtained from such a centralized naming service.

For at least the reasons above, the rejection of claim 41 is unsupported by the cited art and removal thereof is respectfully requested.

**Regarding claim 42, contrary to the Examiner's assertion, Rochberger in view of Weisman and Dutta fails to teach or suggest *wherein said advertisement for the peer group further comprises keywords for use in indexing and discovering the peer group*.** The Examiner cites Dutta as teaching this limitation in paragraph [0083]. This passage describes an augmented search process that includes both an index search and a peer-to-peer search. While this search technique uses indexing, it does not teach or suggest that this index search searches for (or finds) keywords in advertisements for peer groups, nor does Rochberger in view of Weisman teach or suggest such peer group advertisements, as discussed above.

For at least the reasons above, the rejection of claim 42 is unsupported by the cited art and removal thereof is respectfully requested.



**Regarding claim 43, contrary to the Examiner's assertion, Rochberger in view of Weisman and McCanne fails to teach or suggest *wherein said advertisement for the peer group further comprises a description of an initial service to be instantiated by other peer nodes when joining the peer group*.** The Examiner cites McCanne (column 13, line 65 – column 14, line 32) as teaching this limitation. However, there is nothing in this passage about joining a peer group or instantiating an initial service upon joining a peer group, much less about an advertisement for a peer group comprising a description of such an initial service. In addition, as discussed above, Rochberger in view of Weisman fails to teach or suggest such peer group advertisements.

For at least the reasons above, the rejection of claim 43 is unsupported by the cited art and removal thereof is respectfully requested.

**Regarding claim 44, contrary to the Examiner's assertion, Rochberger in view of Weisman and McCanne fails to teach or suggest *wherein said program instructions are further executable to instantiate a membership service, wherein said membership service implements a membership protocol for joining said peer group such that any peer node may apply for membership in said peer group in accordance with the membership protocol*.** The Examiner cites McCanne (column 19, lines 44-48) as teaching these limitations. This passage states only, "The use of IP Multicast could be exploited locally as a forwarding optimization in the "last-hop" delivery of broadcast content. Thus, it is possible for a client to issue an anycast request, and as a result, be redirected to join a multicast group." This passage clearly does not describe a membership protocol such that any peer node may apply for membership, as recited in claim 44. Instead, it describes that it is possible that a client that performed an action other than applying for membership (i.e., an anycast request) may be redirected to join a multicast group. In addition, there is no description of a membership protocol for joining the group.

For at least the reasons above, the rejection of claim 44 is unsupported by the cited art and removal thereof is respectfully requested.

Claim 87 includes limitations similar to those discussed above regarding claim 44. Therefore, the arguments presented above apply with equal force to this claim as well.

**Regarding claim 45, contrary to the Examiner's assertion, Rochberger in view of Weisman and McCanne fails to teach or suggest *wherein said membership service implements a membership policy for said peer group restricting which peers are allowed to join said peer group*.** The Examiner again cites McCanne (column 19, lines 44-48) as teaching this limitation. However, as discussed above, this passage does not describe the membership service of Applicants' claims, much less one in which a membership policy restricts which peers are allowed to join a peer group, as recited in claim 45.

For at least the reasons above, the rejection of claim 45 is unsupported by the cited art and removal thereof is respectfully requested.

**Regarding claim 49, contrary to the Examiner's assertion, Rochberger in view of Weisman and Zhang fails to teach or suggest *wherein said common set of services implements a protocol for joining and leaving said peer group, wherein said protocol is platform independent as to programming language implementations and network transport for said common set of services*.** The Examiner cites Zhang (column 19, lines 9-35) as teaching these limitations. This passage describes how peer group leaders control the joining or merger of two peer groups. This has nothing to do with a protocol for joining and leaving a peer group, nor is any such protocol described as being platform independent as to programming language implementations and network transport for said common set of services, as recited in claim 49.

For at least the reasons above, the rejection of claim 49 is unsupported by the cited art and removal thereof is respectfully requested.

The Examiner rejected claim 48 as being unpatentable over Rochberger and Weisman as applied to claim 39, and further in view of Zhang (U.S. Patent 6,810,259). Applicants traverse this rejection for at least the reasons given above regarding claim 39, from which it depends.

The Examiner rejected claims 88 and 89 under the same rationale as claims 39-45, 48, and 49. However, these claims are directed to different subject matter than claims 39-45, 48, and 49. Since the Examiner has failed to address the differences between these claims and claims 39-45, 48, and 49, the rejection of these claims is improper and removal thereof is respectfully requested.

## **CONCLUSION**

Applicants submit the application is in condition for allowance, and prompt notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-07000/RCK.

Respectfully submitted,

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